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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/676,190

09/29/2000

Stephen F. Gass

SDT 316

9029

27630

7590

02/28/2003

SD3, LLC
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EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/676,190

Applicant(s)

GASS, STEPHEN F.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) 21-24 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-27 and 29-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3-9, 1317.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species I, II, I and V from Groups A, B, C, and D, respectively in Paper No. 19 is acknowledged. The traversal is on the ground(s) that not all Figures were included in the species restriction and further applicant has not allowed to pick Figure 1 encompassing all of the claims. This is not found persuasive because Species restrictions are not based solely on the Figures in the application but rather on the disclosed embodiments.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 21-24 and 28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 19.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 25-27 and 29-34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 10/100,211. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in claim terminology but encompass the same subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 25-27 and 29-34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/051,782. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in claim terminology but encompass the same subject matter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 25-27, 30, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoneda, U.S. Patent 4,117,752.
-

Yoneda discloses the same invention as claimed including: a rotatable blade (14), a detection system (Figure 5, see column 2, lines 15-65, column 3, lines 14-25) capable of detecting a dangerous condition between a person and the blade; and a reaction system (20) capable of engaging the blade and capable of force the blade away from the work zone by the blade merely breaking. It should be noted that the phrases “configured to engage the blade ... configured to use at least ...” (claim 25), “adapted to urge ... contact” (claim 27,31) do not further limit the claimed invention because they are merely functional/intended use not defining any specific structure. How are they configured and adapted?

9. Claims 25-27, 30, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Lokey, U.S. Patent 3,785,230.

Lokey discloses the same invention as claimed including: a rotatable blade (13), a detection system (16) capable of detecting a dangerous condition between a person and the blade; and a reaction system (21,29) capable of engaging the blade and capable of force the blade away from the work zone by the blade merely breaking. It should be noted that the phrases “configured to engage the blade ... configured to use at least ...” (claim 25), “adapted to urge ... contact” (claim 27, 31) do not further limit the

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claimed invention because they are merely functional/intended use not defining any specific structure. How are they configured and adapted?

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 29 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneda or Lokey.

Yoneda and Lokey both disclose the invention substantially as claimed except for the braking systems are for band saws and table saws; however, both Yoneda and Lokey disclose that each of the braking systems could be used on other cutting tools. Moreover, the examiner takes official notice that miter saws with pivot arms are old and well known in the art for the purpose of making miter cuts in workpieces. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the braking systems of Yoneda and Lokey with a miter type saw in order to provide a cutting tool capable of miter cuts with a braking system for safety.

12. Claims 25-27 and 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosten et al. in view of Yoneda or Lokey.

Bosten et al. discloses the invention substantially as claimed except for the detection system and the reaction system; however, Yoneda and Lokey both disclose that it is old and well known in the art to use detection and reaction systems for the

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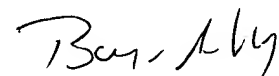
purpose of preventing injury to a user. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a braking system as taught by Yoneda or Lokey with the device Bosten et al. in order to prevent injury to the user of the Bosten et al. device. It should be noted that the phrases "configured to engage the blade ... configured to use at least ..." (claim 25), "adapted to urge ... contact" (claim 27,31,32) do not further limit the claimed invention because they are merely functional/intended use not defining any specific structure. How are they configured and adapted?

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday thru Thursday between 7:30am and 6:00pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.


Boyer D. Ashley
Primary Examiner
Art Unit 3724

bda
February 24, 2003